

Introduced by Senator Simitian

February 17, 2005

An act to repeal Section 1798.82 of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 433, as introduced, Simitian. Personal information: computer security.

Existing law contains 2 identical provisions of law requiring any person or business that conducts business in California and that owns or licenses computerized data that includes personal information to disclose any breach of the security system following discovery or notification of the breach in the security of the data to any resident of this state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

This bill would repeal one of those 2 identical provisions, thereby making a technical, nonsubstantive change.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1798.82 of the Civil Code, as added by
- 2 Section 4 of Chapter 915 of the Statutes of 2002, is repealed.
- 3 ~~1798.82. (a) Any person or business that conducts business in~~
- 4 ~~California, and that owns or licenses computerized data that~~
- 5 ~~includes personal information, shall disclose any breach of the~~
- 6 ~~security of the system following discovery or notification of the~~
- 7 ~~breach in the security of the data to any resident of California~~
- 8 ~~whose unencrypted personal information was, or is reasonably~~

1 believed to have been, acquired by an unauthorized person. The
2 disclosure shall be made in the most expedient time possible and
3 without unreasonable delay, consistent with the legitimate needs
4 of law enforcement, as provided in subdivision (c), or any
5 measures necessary to determine the scope of the breach and
6 restore the reasonable integrity of the data system.

7 (b) Any person or business that maintains computerized data
8 that includes personal information that the person or business
9 does not own shall notify the owner or licensee of the
10 information of any breach of the security of the data immediately
11 following discovery, if the personal information was, or is
12 reasonably believed to have been, acquired by an unauthorized
13 person.

14 (c) The notification required by this section may be delayed if
15 a law enforcement agency determines that the notification will
16 impede a criminal investigation. The notification required by this
17 section shall be made after the law enforcement agency
18 determines that it will not compromise the investigation.

19 (d) For purposes of this section, “breach of the security of the
20 system” means unauthorized acquisition of computerized data
21 that compromises the security, confidentiality, or integrity of
22 personal information maintained by the person or business. Good
23 faith acquisition of personal information by an employee or agent
24 of the person or business for the purposes of the person or
25 business is not a breach of the security of the system, provided
26 that the personal information is not used or subject to further
27 unauthorized disclosure.

28 (e) For purposes of this section, “personal information” means
29 an individual’s first name or first initial and last name in
30 combination with any one or more of the following data
31 elements, when either the name or the data elements are not
32 encrypted:

33 (1) Social security number.

34 (2) Driver’s license number or California Identification Card
35 number.

36 (3) Account number, credit or debit card number, in
37 combination with any required security code, access code, or
38 password that would permit access to an individual’s financial
39 account.

1 ~~(f) For purposes of this section, “personal information” does~~
2 ~~not include publicly available information that is lawfully made~~
3 ~~available to the general public from federal, state, or local~~
4 ~~government records.~~

5 ~~(g) For purposes of this section, “notice” may be provided by~~
6 ~~one of the following methods:~~

7 ~~(1) Written notice.~~

8 ~~(2) Electronic notice, if the notice provided is consistent with~~
9 ~~the provisions regarding electronic records and signatures set~~
10 ~~forth in Section 7001 of Title 15 of the United States Code.~~

11 ~~(3) Substitute notice, if the person or business demonstrates~~
12 ~~that the cost of providing notice would exceed two hundred fifty~~
13 ~~thousand dollars (\$250,000), or that the affected class of subject~~
14 ~~persons to be notified exceeds 500,000, or the person or business~~
15 ~~does not have sufficient contact information. Substitute notice~~
16 ~~shall consist of all of the following:~~

17 ~~(A) E-mail notice when the person or business has an e-mail~~
18 ~~address for the subject persons.~~

19 ~~(B) Conspicuous posting of the notice on the Web site page of~~
20 ~~the person or business, if the person or business maintains one.~~

21 ~~(C) Notification to major statewide media.~~

22 ~~(h) Notwithstanding subdivision (g), a person or business that~~
23 ~~maintains its own notification procedures as part of an~~
24 ~~information security policy for the treatment of personal~~
25 ~~information and is otherwise consistent with the timing~~
26 ~~requirements of this part, shall be deemed to be in compliance~~
27 ~~with the notification requirements of this section if the person or~~
28 ~~business notifies subject persons in accordance with its policies~~
29 ~~in the event of a breach of security of the system.~~